



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 26, 2003

Mr. Samith C. Hill
Chief of Police
Forest Hills Police Department
3336 Horton Road
Forest Hills, Texas 76119

OR2003-2065

Dear Mr. Hill:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177770.

The Forest Hill Police Department (the "Department") received a request for a videotape of a police pursuit that occurred on December 12, 2002. You assert the requested information is excepted from disclosure under section 552.108 of the Government Code. We have reviewed the information you submitted and we have considered the exception you claim.

Initially, we address the Department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this case, the Department received the request for information that was dated December 17, 2002. The Department should have forwarded copy of the specific information to this office by January 13, 2003. The specific information the Department submitted to our office for review has a postmark dated March 13, 2003. Therefore, we find that the Department did not submit the required information within the prescribed period. Consequently, we conclude the Department failed to comply with the requirements of subsection 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or the information impacts third party interests. Open Records Decision No. 150 at 2 (1977). In your letter seeking an opinion from this office, you assert section 552.108 of the Government Code, a discretionary exception under the Public Information Act (the "Act"), which generally does not qualify as a compelling reason to withhold information from the public. *See* Open Records Decision No. 586 (1991) (providing that a governmental body may waive section 552.108 of the Government Code).

However, this office has determined that the need of another governmental body to withhold requested information may provide a compelling reason for nondisclosure under section 552.108. Open Records Decision No. 586 (1991). The Tarrant County District Attorney's Office (the "District Attorney") has submitted a letter to this office in which it asserts section 552.108(a)(1) as a basis for withholding the requested videotape. Section 552.108(a)(1) excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). The District Attorney informs us that because the videotape concerns a pending prosecution, the District Attorney wants to withhold the information. Based on the arguments made by the District Attorney and our review of the submitted videotape, we agree the release of this information "would interfere with the detection, investigation, or prosecution of crime." *Id.* Therefore, the Department has provided this office with a compelling reason to rebut the presumption of openness normally required by section 552.302 of the Government Code. *See* Open Records Decision No. 586. Thus, the Department may withhold the videotape under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

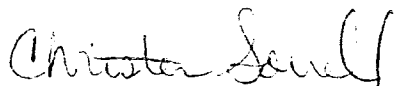
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 177770

Enc: Submitted documents

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